IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 8152 of 1995

Between:

P.Vithal Pochaiah, S/o.Parvatham Pochaiah,

Aged about 50 years, Occ. Agriculture,

R/o.Main Road, Takhalghat, Tq.Hinga, Nagpoor District.

..... PETITIONER

AND

1. The District Collector, Adilabad.

2. The Sub-Collector, Asifabad

3. The Mandal Revenue Officer, Bijjapur,

Adilabad District.

...RESPONDENTs

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus directing the respondents herein either to resume the lands i.e. Ac.25.06 pursuant to the order passed by the Land Reforms Tribunal, Asifabad vide Rc.No.S/796/75 dated 12.7.77 under Section 7(3) of the Act 10/77 which were surrendered pursuant to the order passed by the Land Reforms Tribunal, Asifabad,

vide L.C.C.No.S/796/75 dated 30.6.1976 by invoking the provisions of Sec.7(5) of the Act 10/77 within six weeks from the date of receipt of the order by duly declaring the inaction of the respondents in this case is nothing but arbitrary, illegal and violative of Art.14 and 300-A of the Constitution of India and pass such other order or orders as this Honourable Court may deem fit and proper.

Counsel for the Petitioner: MR.S.CHANDRASEKHAR

Counsel for the Respondent No.: GP FOR REVENUE

The Court made the following :

Oral Order: (per Sri BRSR.J)

The petitioner in this writ petition invokes the extraordinary jurisdiction of this court under Article 226 of the Constitution of India and accordingly prays for issuance of a writ of Mandamus directing the respondents herein "either to resume the lands i.e. Ac.25.06 pursuant to the order passed by the Land Reforms Tribunal, Asifabad vide Rc.No.S/796/75 dated 12.7.77 under Section 7(3) of the Act 10/77 which were surrendered pursuant to the order passed by the Land Reforms Tribunal, Asifabad, vide L.C.C.No.S/796/75 dated 30.6.1976 by invoking the provisions of Sec.7(5) of the Act 10/77". The prayer is somewhat vague in its terms.

However, we shall notice a few relevant facts in order to consider whether the petitioner is entitled to any relief. The petitioner's father Parvatham Pochaiah filed a declaration under Section 8(1) of the A.P.Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short 'the Act') on behalf of his family unit. It is the case of the petitioner that he and his brother Venkataiah attained majority as on the date of filing of the declaration. But, his other brother P.Jaggaiah was minor as on the date of filing of the declaration. The Land Reforms Tribunal determined the total holdings of the family unit at 1.7191 standard holdings as against which the family unit is entitled to hold only 1.0000 standard holding. The Land Reforms Tribunal accordingly held that the family unit was holding the land in excess of the ceiling

area as on the notified date i.e. 1.1.1975 to an extent of 0.7191 standard holdings.

That after the determination of the holding of the family unit, the Land Reforms Tribunal issued notice under Section 10(2) of the Act to the petitioner's father and he accordingly surrendered the following lands.

1. Koyapalli village 10 dry 10-10

2. Burgudem 42 dry 3-18

3. Gabbai 52 dry 5-00

4. Papannapet 78 dry 6-78

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Total…… 25-06 acres

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It is the case of the petitioner that after the surrender of the land, the same has been assigned to the eligible landless poor persons. It appears, the petitioner's father filed an application before the Land Reforms Tribunal seeking fresh determination of the land held by the Family Unit in view of the amended provision i.e. Section 4(a) inserted into the Act. The Land Reforms Tribunal vide its order dated 12.7.1977 held that the family unit did not hold any land in excess of the ceiling area as on the notified date i.e., 1.1.1975. The order dated 20.6.1976 passed by the Land Reforms Tribunal declaring the family unit of the deceased father as surplus holding was accordingly modified. There is no dispute whatsoever that the order attained the finality.

That after the death of the petitioner's father, the petitioner claims to have made a written application dated 25.11.1987 to redeliver the surplus lands taken over from the possession of the petitioner's father or pay compensation in lieu

thereof. The application met with no response. It is under those circumstances, the present writ petition has been filed.

The learned counsel for the petitioner submitted that the petitioner is entitled to return of the land surrendered by his father in view of the re-determination of the land held by the family unit of the deceased father of the petitioner as is evident from the proceedings dated 12.7.1979. The respondents are not entitled to retain the lands in their possession and such retention is illegal and arbitrary.

In the counter affidavit filed by the State it is admitted that at the request of the father of the petitioner, re-determination was made in which it was found that the family unit was not holding any surplus land as on the notified date. It is admitted that the petitioner's father and his family unit was not holding any excess land than the prescribed ceiling limit.

It is further explained that except the land admeasuring Ac.10.00 in S.No.10 of Koyapalli village, the other lands surrendered by the petitioner's father were not allotted in favour of any land less poor person as alleged by the petitioner. That an extent of Ac.6.78 cents in S.No.78 situate at Papannapet village of Bejjur mandal actually stands in the name of one Yelluri Jakkulu, R/o Papannapet. Neither the petitioner nor his father have anything to do with the said property. The petitioner's father was only a cultivator. In fact, that land was acquired long time ago under the provisions of the Land Acquisition Act, 1894 for the public purpose of providing house sites to the weaker sections of the society and even compensation was paid. That so far as the land admeasuring Ac.3.18 guntas situate at Booruguda village is concerned, the same was deleted from the patta and included in the Government land during the revision survey and the same was implemented in the revenue records as early as in the year 1975-76 which remained unchallenged. That the land

in S.No.l52 admeasuring Ac.5.00 of Gabbai village was actually assigned to the petitioner's father on a misrepresentation and in an irregular manner. That was detected and that assignment was accordingly cancelled by the Collector, Adilabad vide proceedings dated 14.10.1984 which has attained finality. Possession of the said land was taken and assigned to the landless poor persons.

The facts noticed hereinabove would clinchingly establish that even the petitioner's father was not entitled for the return of any land except Ac.10.00 of land in S.No.10 of Koyalagudem village which was admittedly surrendered by the father of the petitioner and distributed to the landless poor persons. The petitioner is entitled for return of that land only.

But we are required to notice that the said land has already been allotted to one Komaram Kistaiah S/o Lingaiah and to one Ravathi Narayana, S/o Hanmaiah, Ac.5.00 each . They are the landless poor persons and continued to be in possession of the same after the assignment granted by the competent authority. In the circumstances, we are not inclined to issue any direction to the respondents herein to redeliver the said land admeasuring Ac.10.00 to the petitioner.

Rule 10(A) of the A.P.Land Reforms (Ceiling on Agricultural Holdings Rules, 1974 (for short 'the Rules') provides the procedure for retransfer of the land vested in Government in certain cases. Rule
10-A(4) declares that in case where the District Collector considers that the resumption of the land from the allottee or transferee is likely to cause undue hardship, he may after obtaining the approval of the Government, pay to the person who is entitled to receive the amount in respect of the land under the Act, in lieu of transferring the land, a sum equal to the amounts as determined in accordance with

the proviso to sub-section (5) of Section 7 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Amendment Act, 1977 (Act 10 of 1977).

Evidently, in the present case, the retransfer of the land already allotted to the weaker sections of the society would cause undue hardship to those allottees and in the circumstances, the only alternative that is available to the respondents is to pay the amounts in respect of the land in lieu of retransferring the said land.

In the result, we hold that the petitioner is entitled to receive the amounts in respect of the land admeasuring Ac.10.00 in S.No.10 of Koyapalli village in lieu of retransfer of the same.

The writ petition shall accordingly stand disposed of directing the respondents herein to forthwith initiate steps in accordance with Rule 10-A(4) of the Rules and pay the amount in respect of the said land in terms thereof. The proceedings in this regard shall be completed resulting in payment of the amount to the petitioner within a period of four months from the date of receipt of this order. No orders as to costs.

(B.SUDERSHAN REDDY,J)

DATED 30..09..2004

(K.C.BHANU,J)

msv.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The District Collector, Adilabad.

2. The Sub-Collector, Asifabad

3. The Mandal Revenue Officer, Bijjapur,

Adilabad District.

4. 2 CCs to GP for Revenue

5. 2CD copies